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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/631,103

07/31/2003

Anthony J. Hynes

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5409 7590 02/20/2009  
SCHMEISER, OLSEN & WATTS  
22 CENTURY HILL DRIVE  
SUITE 302  
LATHAM, NY 12110

EXAMINER

BRINSON, PATRICK F

ART UNIT

PAPER NUMBER

3754

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/631,103	<b>Applicant(s)</b> HYNES ET AL.	
	<b>Examiner</b> Patrick F. Brinson	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 13, 15-18, 20-23, 25, 26 and 31-34 is/are pending in the application.
- 4a) Of the above claim(s) 14, 19 and 29 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23, 25, 26 and 34 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 15-17 and 31 is/are rejected.
- 7) ☒ Claim(s) 9, 13, 18-22, 32 and 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. It has come to the attention of the examiner that claims 14, 19 and 29 have claim identifiers stating that the claims are “previously presented” however each of these claims were previously withdrawn, see amendment filed 11 April 2006. As such these claims are withdrawn from examination.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter recited in claim 9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the

filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. Claims 17 and 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 31 is unclear in reciting a device including a base, a rotatable threaded shaft and a metering element, further reciting the step of moving one of the base, metering element, compressible material line or a combination to cause a peristaltic effect upon a material within the compressible material line and rotating the threaded shaft causing controlled motion of said metering device. It is not clear how rotating the shaft will cause rotation of the device. It would seem that the rotation of the shaft would cause movement of one of the elements previously recited as moving and not the device, which has previously been recited as including the base, threaded shaft and metering element. Similarly, claim 17 recites a material delivery unit including a reservoir, dispensing end and a compressible material line. It is further recited that the dispensing end is movably

secured to the delivery unit for movement with the delivery unit during operation. It is not clear how the end, which is attached to the unit, moves with the unit during operation. As recited, it appears that the entire device moves.

4. Claim 17 also recites “valve” without any structural connection to any other recited elements. Also “base” is recited without structural connection to the material delivery unit.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-8, 10, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 4,256,242 to **Christine**.

The patent to **Christine** discloses a metering device comprising a material reservoir (45) for containing material, a rotatable metering element (64) attached for engaging a compressible material line (49), thereby causing a selectable peristaltic effect upon the material in the compressible material line, wherein the reservoir directly communicates with the compressible material line, and a material dispensing end (67), movably secured to the metering element for movement with the metering

element during dispensing, as recited in claims 1 and 5. The device further includes a base (65) so adapted that the compressible material line is positioned between it and the metering device, as recited in claim 3. Fig. 6 illustrates the base including a depression for engagement with the material line, as recited in claim 4. The metering device includes roller (64) which is rotatable and arm (62) which slides partially along the length of the compressible line, as recited in claim 6. The device is manually operated, and therefore a user may select a desired amount of material to be dispensed.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over

**Christine** in view of U.S. 6,036,056 to **Lee et al.**

The patent to **Christine** discloses the recited structure, with the exception of providing a control system for controlling the peristaltic effect. The patent to **Lee et al.** discloses a similar dispensing device including an automatic control mechanism

that provides a peristaltic effect to the dispensing line. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide to the device of **Christine** a control system, as suggested by **Lee et al.** in order to automatically control the dispensing of the material.

### ***Response to Amendment***

7. As previously pointed out, claims 14, 19 and 29 have inadvertently been rejoined as “active” claims, however, these claims were previously withdrawn in response dated 11 April 2006 to election of species requirement. As a result of further search and consideration, previously allowed independent claims 1 and 17 have been rejected. Claim 1 is now rejected by prior art, as discussed above wherein the Christine reference discloses the recited structure. Claim 17 is rejected as being indefinite. Applicant has overcome the prior art rejections of claims 23 and 31, however, as pointed out previously, claim 31 is indefinite in reciting that the step of rotating the thread shaft causes the movement of the metering device.

### ***Allowable Subject Matter***

8. Claims 23, 25, 26 and 34 are allowed.

9. Claims 9, 13, 18, 20-22, 32 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 17 and 31 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kevin P. Shaver** can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the



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automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick F. Brinson/

Primary Examiner, Art Unit 3754

P. F. Brinson

February 17, 2009